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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/919,062	07/30/2001	Donald J. Schremp	10004377-1	2666

7590 09/10/2004
AGILENT TECHNOLOGIES, INC.
Legal Department, DL429
Intellectual Property Administration
P.O. Box 7599
Loveland, CO 80537-0599

EXAMINER

PADMANABHAN, KARTIC

ART UNIT PAPER NUMBER

1641

DATE MAILED: 09/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/919,062

Applicant(s)

SCHREMP, DOANLD J.

Examiner

Kartic Padmanabhan

Art Unit

1641

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 29 July 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: -.

Claim(s) objected to: -.

Claim(s) rejected: 1-25 and 71-97.

Claim(s) withdrawn from consideration: -.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____



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09/05/04

Continuation of 2. NOTE: applicant's proposed amendments would require further consideration under 35 USC 112, 2nd paragraph in terms of proper antecedent basis, at the least. In addition, the limitation of the biopolymers being DNA was never previously presented, and as such, has never been searched or considered.

Continuation of 5. does NOT place the application in condition for allowance because: of reasons set forth in the previous office action. In addition, applicant argues that the references do not teach a wall extending from an area adjacent a top edge of the well to a top of the housing, to which the examiner disagrees. The examiner agrees with applicant that the adjacent wells of the microtiter plate do not satisfy this limitation, but a cover on the microtiter plate does. Applicant is mistaken in believing that the examiner believed the wall identified to be vertical in contacting the cover is the wall of the well. Rather, the structure of microtiter plate covers is a horizontal top portion, with walls extending down from this top portion to fit the grooves on the microtiter plate. It is these walls of the cover that contact the microtiter plate that the examiner has identified as the wall in question. And, contrary to applicant's assertion, when a lid is placed over the microtiter plate, given its broadest interpretation, the whole structure may be viewed as the housing. Applicant then argues that the walls are vertical, which does not meet the limitation of "sloped." The examiner acquiesces to applicant's position that vertical is not "sloped" however, the examiner maintains that the walls of the microtiter plate cover that extend down to contact the microtiter plate are never perfectly vertical, and the smallest deviation from the vertical would be sufficient to qualify as sloped. Applicant then argues that the references do not teach the limitation of a wall extending from an area adjacent a top edge of the well to the top of the housing wherein a ledge extends from the edge to the at least one wall, to which the examiner agrees. The examiner never argues that the references teach this feature; however, since this limitation is in the alternative, the references need not teach this feature. Applicant also asserts that the claimed invention possesses the wicking problem associated with the prior art. However, once again, applicant has merely made conclusory statements about the alleged advantages of the present invention over the prior art, but has not provided any basis for these conclusions. As advised on at least two prior occasions, applicant must submit a declaration with evidence that the present invention does indeed possess the advantages asserted. The remainder of applicant's arguments seems to rely on the premise that the independent claims are not properly rejected, as applicant simply states that the references do not teach the limitations of the dependent claims without providing any rationale. These arguments are not convincing, as the examiner maintains that the independent claims are properly rejected.